

For preliminary hearing purposes, the administrative law judge denied benefits and held that the claimant failed to prove that he sustained personal injury by accident arising out and in the course of his employment. The claimant now requests the Appeals Board to review that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board, for preliminary hearing purposes, finds:

(1) The order of Administrative Law Judge Alvin E. Witwer dated April 6, 1994, denying claimant workers compensation benefits for an alleged accident of December 31, 1993, should be affirmed.

(2) Claimant alleges that he sustained personal injury by accident arising out of and in the course of his employment with the respondent on December 31, 1993. However, the evidence does not support claimant's contentions. Claimant testified that he experienced pain in his back on Friday, December 31, 1993, when he was lifting an 80 pound shaft. Claimant did not report the incident to his employer as the pain immediately subsided and had resolved before he left work that day. Claimant testified he experienced increased symptomatology over the weekend and was hardly able to get out of bed on Sunday morning. Claimant reported to work on Monday and advised his supervisor, Wayne Snow, that his back hurt and he needed medical treatment. At that time, claimant told his supervisor that he did not know the cause of his back complaints.

After talking with his supervisor, claimant sought medical treatment for his back and was admitted into the hospital. Claimant told hospital personnel that he did not know what had happened to his back. Claimant testified that he did not initially associate his back problems with the pain that he had experienced on Friday. However, claimant states that he remembered the shaft incident while in the hospital. Claimant remained in the hospital until January 6, 1994. On January 6, claimant took his physician's off work slip to his employer. Although the record is unclear as to what was said, claimant states that he attempted to explain to his supervisor that he had experienced back pain while at work on December 31st, but that his supervisor told him he could not file a workers' compensation claim as he had failed to report the incident at the time it happened.

On January 25, 1994, claimant met with his immediate supervisor and the editor of the respondent newspaper. At this meeting, claimant once again told his supervisor and the editor that he did not know how he had hurt his back.

Wayne Snow testified at the preliminary hearing. Mr. Snow testified that no shafts were changed on December 31 as the newspaper presses had been readied the night before because the employees were to get off early that day. Mr. Snow also denies that on January 6 claimant tried to explain that he was injured on the job, and denies that he ever told claimant he could not file a workers compensation claim. Mr. Snow testified that claimant told him on January 6 that he did not know how he had injured his back.

Jim Hitch, editor and publisher of the respondent newspaper, also testified at preliminary hearing. Mr. Hitch corroborated Mr. Snow's testimony and testified that claimant told him during their meeting on January 25 that he did not know how he had injured his back.

A review of the medical records presented fails to indicate a relationship between an alleged incident at work and claimant's back complaints. An emergency room record dated January 3, 1994 indicates that claimant had pain from an "unknown etiology". Another record dated January 3 indicates that claimant had experienced vague pain in both legs and the lower back for about the last month. The medical record dated January 4 from Dr. Schaper indicates that claimant developed acute pain in his back with radiation down the left leg this past Sunday; that claimant had "an episode of back pain several years ago, however, nothing recently. The pain came on without an injury and has gotten worse.

Based upon the above, the Appeals Board finds that claimant has failed to prove that he has sustained personal injury by accident arising out of and in the course of his employment with the respondent.

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish his right to an award of compensation and to prove the various conditions upon which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record. K.S.A. 44-501(a).

"Burden of proof" means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not on the basis of the whole record. K.S.A. 44-508(g).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, the preliminary hearing order of Administrative Law Judge Alvin E. Witwer dated April 6, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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